

REMARKS

The Notice for Improper Request for RCE, dated December 14, 2006 did not specify that the Applicant is entitled to a shortened statutory response period. This response, is nonetheless timely as the previous filing had been a bona fide attempt to provide a complete reply to the last Office Action under MPEP §706.07(h). As requested by Examiner Nicholas, and as explained below, bona fide attempts to file a complete RCE application are entitled to a one-month reply period.

Pursuant to the MPEP, §706.07(h), subpart VI, an applicant is entitled to a shortened statutory period of one month (subject to renewals) even if the Examiner determines that the previously submitted RCE application was not fully responsive. Two categories of faults with RCE applications are *explicitly* considered bona fide. One of the two categories of bona fide applications covers applications where the RCE submission is a “(B) presentation of claims for different invention.”¹

¹ See MPEP §706.07(h), subpart VI, paragraphs 3-6. These read:

If the submission is a bona fide attempt to provide a complete reply, applicant should be informed that the submission is not fully responsive to the final Office action, along with the reasons why, and **given a new shortened statutory period of one month or thirty days** (whichever is longer) to complete the reply. See 37 CFR 1.135(c). Form paragraph 7.42.08 set forth below should be used.

Situations where a submission is not a fully responsive submission, but is a bona fide attempt to provide a complete reply are:

(A) Non-compliant amendment - An RCE filed with a submission which is an amendment that is not in compliance with 37 CFR 1.121, but which is a bona fide attempt to provide a complete reply to the last Office action, should be treated as a proper RCE and a Notice of Noncompliant Amendment should be mailed to the applicant. Applicant is given a time period of one month or thirty days from the mailing date of the notice, whichever is longer, to provide an amendment complying with 37 CFR 1.121. See MPEP § 714.03 for information on the amendment practice under 37 CFR 1.121.

(B) Presentation of claims for different invention - Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. If an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as a proper RCE but the amendment should not be entered. The amendment is not fully responsive and applicant should be given a time period of one month or thirty days (whichever is longer) to submit a complete reply. See MPEP § 821.03. Form paragraphs 8.04 or 8.26 should be used as appropriate.

Id. Emphasis added.

The fault alleged with the RCE filing in this case, that the claims are for a different invention, under MPEP §706.07(h) subpart VI, is explicitly entitled to the reply period. The mail intake officer in Examining Group AU 1742 failed to use the correct form paragraph in the Office Action. In a telephone call on December 20, 2006 the Examiner verified that the Applicant is entitled to the shortened statutory period as long as the proper MPEP section is brought to the Examiner's attention.

Applicants submit that the RCE-submitted claims are not statutorily independent and distinct from the previous claims. However, for the sake of expediency, the applicants proffer the enclosed new claims listing.

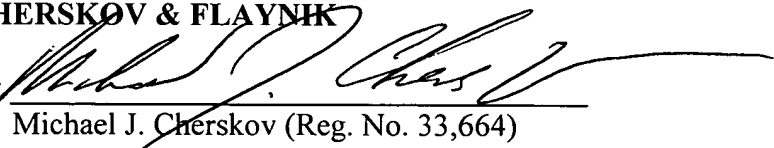
Support for the limitations added to the claims are found on pages 9-10 of the specification.

An earnest attempt has been made hereby to respond to the Notice of Improper Request for Continued Examination. Applicants submit that the application is now in condition for favorable consideration. If the Examiner feels that a telephonic interview will expedite allowance of the Application, he is respectfully urged to contact the undersigned at the telephone number listed above. Claims 1-4, 6, and new claims 21-24 are pending.

Respectfully submitted

CHERSKOV & FLAYNIK

By


Michael J. Cherskov (Reg. No. 33,664)